

**REMARKS**

Applicant has carefully reviewed and considered the Office Action mailed on April 25, 2005, and the reference cited therewith.

Claims 1, 23, 26, and 29 are amended, and no claims are canceled or added; as a result, claims 1-31 are now pending in this application.

**Claim Rejections Under 35 USC § 102**

Claims 1-31 were rejected under 35 USC § 102(b) as being anticipated by Bertram (U.S. Patent No. 5,899,325) (hereafter "Bertram"). Applicant has amended claims 1, 23, 26, and 29, from which the remaining rejected claims depend, and respectfully traverses the rejection.

Bertram discloses a foam-in-place packaging system, which comprises a bag formed of two sheets of flexible plastic film material sealed on all four sides by respective edge seals. A plurality of frangible seals are between the two sheets and define separate interior cells in the bag. The cells separately contain a first and second foam precursor composition. (see Abstract and Figs. 2-6).

Applicant's claims 1, 23, 26, 29, and the claims that depend from them, include at least the following distinguishing elements:

"An apparatus comprising:

a foam containment unit . . .;

a foam precursor storage unit . . .; and

a foam precursor heating unit, located in contact with and in thermal proximity to the foam precursor storage unit . . ."

As will be explained in more detail below, Bertram does not disclose a foam precursor heating unit that forms a portion of an apparatus, nor does Bertram disclose a foam precursor heating unit located in contact with and in thermal proximity to a foam precursor storage unit. Accordingly, Bertram does not disclose the limitations of Applicant's claims 1-31.

In order to explain Applicant's traverse, Applicant refers to certain statements made in the Office Action, and refutes these statements in turn. These statements include at least the following:

A. First Refuted Office Action Statement:

The Office Action states:

"Furthermore, the language in the specification Col. 7 Lines 29-37, suggest the use of some sort of heating unit to initiate a reaction between the materials enclosed in the foam precursor storage unit. It can be interpreted that the location of the heating unit could either be located in the interior or exterior foam-in-bag cushion device." (see Office Action, pages 2-3)

Applicant refutes this statement for the following reasons.

As mentioned above, Bertram states, at col. 7, lines 29-37:

"Preferably, to provide the energy required to start and facilitate the reaction of the foam precursor components 52 and 53 and to ensure more complete reaction thereof, the bag 31 and packet 40 are warmed or heated to between 120° and 145° Fahrenheit, preferably about 130° F., prior to mixing of the precursor components. The other parameters for proper formation of the foam cushion are discussed and set forth in U.S. Pat. No. 5,699,902 previously incorporated herein by reference."

The patent cited in this quotation, U.S. Pat. No. 5,699,902 is the patent which is referred to in the present Office Action as Sperry 902. Sperry 902 states, at col. 7, lines 12-14, that "... because the present invention is an off-the-shelf system in which the foam precursors are used at ambient temperatures rather than being heated . . ." Nowhere else in Sperry 902 is foam precursor heating discussed. Accordingly, Sperry 902 gives no support to the statement in the Office Action that "It can be interpreted that the location of the heating unit could either be located in the interior or exterior foam-in-bag cushion device."

Further, the Office Action provides no citation which supports the statement that “It can be interpreted that the location of the heating unit could either be located in the interior or exterior foam-in-bag cushion device.”

Applicant suggests that an interpretation of Bertram might more accurately be gleaned from U.S. Patent 6,065,636, Sperry et al. (hereafter the “636 Patent”). This reference was previously disclosed in an Information Disclosure Statement considered by the Examiner on 4/14/2005, an initialed copy of which accompanied the Office Action. Applicant would like to point out that, not only is the 636 Patent assigned to the same assignee as Bertram and Sperry 902, but that George T. Bertram, who is the inventor on Bertram (U.S. Patent 5,899,325) used to reject Applicant’s claims, is also an inventor on the 636 Patent. Accordingly, Applicant believes that the 636 Patent is particularly relevant to indicate possible interpretations in the art.

The 636 Patent discloses a “convective warmer,” which resembles an oven (see Figs. 1, 2, 4-6), and which is clearly external to the foam-in-place bags. The 636 Patent discloses “. . . a warmer . . . provided for warming a plurality of bags 12 . . .” (col. 3, lines 55-58).

The Office Action statement that “It can be interpreted . . .” appears to be a taking of Official Notice. Applicant respectfully traverses this Official Notice and requests the Examiner provide a reference that describes that a “location of the heating unit could either be located in the interior or exterior foam-in-bag cushion device.” Absent a reference, it appears that the Examiner is using personal knowledge. Accordingly, Applicants respectfully request that the Examiner submit an affidavit as required by 37 CFR § 1.104(d)(2).

Nowhere does Bertram indicate a location of a heating unit. Nor does the Office Action provide support for the statement that “It can be interpreted that the location of the heating unit could either be located in the interior or exterior foam-in-bag cushion device.” Accordingly, Applicant refutes this statement from the Office Action.

B. Second Refuted Office Action Statements:

The Office Action states:

“Please note materials used within the device are interpreted as a recitation of intended use and bear no weight to the structural limitations of the device.” (see Office Action, page 2)

“It is also known that traditional heating units would traditionally consist of a heating coil, battery pack energy source, and a switch for activation. Furthermore, the materials incorporated in the use of this device is merely viewed as a recitation of intended use, as in the case of incorporating a supercooled liquid for cooling the processed foam material.” (see Office Action, page 3)

Applicant refutes these statements for the following reasons.

The Office Action does not specify which “materials” used within the device are being viewed as a “recitation of intended use.” In Applicant’s claims 18-22, certain claim elements are specified. These claim elements are intended to be elements of the various apparatus, and not “recitations of intended use.” Applicant requests that the Examiner clarify this reasoning. Absent such clarification, Applicant must refute this statement.

The statement that “. . . incorporating a supercooled liquid for cooling the processed foam material . . .” does not appear to be relevant to Applicant’s claims. Applicant has not claimed a “supercooled liquid” for this purpose.

In addition, the Office Action statement that “It is also known that traditional heating units would traditionally consist of a heating coil, battery pack energy source, and a switch for activation” appears to be a taking of Official Notice. Applicant respectfully traverses this Official Notice and requests the Examiner provide a reference that supports this statement. Absent a reference, it appears that the Examiner is using personal knowledge. Accordingly, Applicants respectfully request that the Examiner submit an affidavit as required by 37 CFR § 1.104(d)(2).

The Office Action does not provide support for the above-given statements. Accordingly, Applicant refutes these statements from the Office Action.

C. Third Refuted Office Action Statement:

The Office Action states:

“It is also known in the prior art as taught by Sperry 902 that injection devices are used in these foam precursor units (Col. 1, lines 29-42) which is interpreted in the art as a type of syringe.” (see Office Action, page 3)

Applicant refutes this statement for the following reasons.

Sperry 902 states that “. . . the polyol and isocyanate were pumped from separate supplies, mixed, and then injected from a gun-like dispenser into the container.” (col. 1, lines 30-32). Sperry 902 goes further to provide an example of such a “gun-like dispenser” as being disclosed in application Ser. No. 08/361,322, filed Dec. 21, 1994, and now issued as U.S. Pat. No. 5,590,816 (hereafter, the “816 Patent”). The 816 Patent is disclosed in an Information Disclosure Statement, which is being submitted with this Response. Applicant would like to point out that, not only is the 816 Patent assigned to the same assignee as Sperry 902, but that George T. Bertram, who is the inventor on Bertram (U.S. Patent 5,899,325) used to reject Applicant’s claims, is also an inventor on the 816 Patent. Accordingly, Applicant believes that the 816 Patent is particularly relevant to indicate possible interpretations in the art.

The handheld dispenser disclosed in the 816 Patent clearly does not resemble a “syringe,” but instead, as Bertram states, more appropriately is “gun-like.” In particular, see Fig. 2 of the 816 Patent. In addition, the handheld dispenser disclosed in the 816 Patent does not form a portion of a foam-in-bag apparatus, but instead is a separate device. In particular, see Fig. 1 of the 816 Patent. Applicant requests clarification of how a “gun-like dispenser” can be interpreted as a type of syringe.

The Office Action statement that “. . . injection devices are . . . interpreted in the art as a type of syringe . . .” appears to be a taking of Official Notice. Applicant respectfully traverses this Official Notice and requests the Examiner provide a reference that supports this statement. Absent a reference, it appears that the Examiner is using personal knowledge. Accordingly,

Applicants respectfully request that the Examiner submit an affidavit as required by 37 CFR § 1.104(d)(2).

Nowhere does Bertram indicate a syringe. Nor does the Office Action provide support for the statement that “. . . injection devices are used in these foam precursor units (Col. 1, lines 29-42) which is interpreted in the art as a type of syringe.” Accordingly, Applicant refutes this statement from the Office Action.

Bertram does not teach each and every element of Applicant's claims 1-31. Based on the amendments and the above remarks, Applicant believes that claims 1-31 are in a condition for allowance. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1-31 under 35 USC § 102(b), and allow these claims.

*Description of Specification Amendment*

The amendment to the Specification is being made to correct a typographical error. No new matter is introduced as a result of this amendment.

*Support for Claim Amendments*

Support for the amendments to claims 1, 23, 26, and 29 may be found in Applicant's originally filed application at page 7, lines 3-5. No new matter is introduced as a result of these amendments.

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111

Serial Number: 10/777,547

Filing Date: Feb. 12, 2004

Title: FOAM-IN-PLACE APPARATUS, AND METHODS OF USE AND MANUFACTURE

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Dkt: 2009.002US1

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (480-538-1735) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

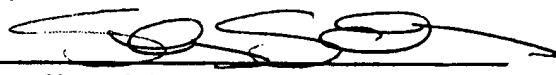
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Date 25 July 2005

By

  
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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231, on this 25th day of July, 2005.

PATRICIA A. HULTMAN

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Signature